

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 7	CCRB Case #: 200905042	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/25/2009 7:45 PM, Thursday, 03/26/2009	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 9/25/2010	EO SOL 9/25/2010	
Date/Time CV Reported Thu, 04/02/2009 12:53 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/02/2009 12:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Philip Fioranelli	13928	934865	081 PCT
2. POF Emily Harris	20669	941882	081 PCT
3. Officers			

Officer(s)	Allegation	Investigator Recommendation
A.POM Philip Fioranelli	Force: PO Philip Fioranelli used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Philip Fioranelli	Abuse: PO Philip Fioranelli entered § 87(2)(b)	§ 87(2)(b)
C.POF Emily Harris	Abuse: PO Emily Harris entered and searched § 87(2)(b)	§ 87(2)(b)
D.POF Emily Harris	Force: PO Emily Harris used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Philip Fioranelli	Abuse: PO Philip Fioranelli seized § 87(2)(b)'s property.	§ 87(2)(b)
F.POF Emily Harris	Abuse: PO Emily Harris seized § 87(2)(b)'s property.	§ 87(2)(b)
G. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	§ 87(2)(b)
§ 87(4-b) § 87(2)(g)	§ 87(4-b) § 87(2)(g)	§ 87(2)(b)

Synopsis

On April 2, 2009, § 87(2)(b) called the CCRB to report a complaint about the following incident.

On the evening of March 25, 2009, her birthday, § 87(2)(b) was in her apartment inside § 87(2)(b) in Brooklyn with her friend § 87(2)(b) playing music in celebration. At some point § 87(2)(b) went into the bathroom to take a shower. Afterwards, § 87(2)(b) the resident in the apartment above that of § 87(2)(b) knocked on § 87(2)(b) door. § 87(2)(b) answered the door. § 87(2)(b) asked § 87(2)(b) to turn down the music. § 87(2)(b) refused. At 7:33 PM, § 87(2)(b) called 911. At approximately 7:49 PM PO Philip Fioranelli and PO Emily Harris arrived at § 87(2)(b). After speaking with § 87(2)(b) they headed for § 87(2)(b) apartment.

While § 87(2)(b) was in the still in the bathroom, § 87(2)(b) told her that police officers were headed for her apartment. § 87(2)(b) followed § 87(2)(b) back to the front room. The front door to the apartment was already open. § 87(2)(b) alleged that, as § 87(2)(b) attempted to close the door, PO Fioranelli slapped her hand away from the door and both he and PO Harris entered the apartment and followed § 87(2)(b) and § 87(2)(b) into § 87(2)(b) bedroom (**Allegations A, B and C**). PO Fioranelli asked for the resident of the apartment to identify herself and for her to provide ID. When both § 87(2)(b) and § 87(2)(b) refused to respond, PO Fioranelli threatened to arrest the resident if she did not identify herself. § 87(2)(b) provided her driver's license to PO Fioranelli. PO Fioranelli returned to the front room to run a warrant check. § 87(2)(b) alleged that, while PO Fioranelli was running the warrant check, PO Harris opened a door that led to her son's room, turned on the light, and looked inside (**Allegation C**).

PO Fioranelli returned and informed § 87(2)(b) that they would be taking her speakers. She told the officers that she would not allow them to take her speakers and placed her hands on one of the speakers. § 87(2)(b) alleged that PO Harris grabbed her by the arms, pushed her away (**Allegation D**), and threatened to arrest her if she tried to prevent them from taking the speakers. The officers proceeded to take her speakers (**Allegations E and F**). PO Fioranelli then gave § 87(2)(b) a summons for making unreasonable noise. The next day PO Fioranelli returned to § 87(2)(b) apartment and gave her vouchers for her speakers and told her to pick them up at the 81st Precinct stationhouse.

On April 1, 2009, § 87(2)(b) went to the 81st Precinct stationhouse to retrieve her speakers. When she retrieved them, she alleged that they had sustained cosmetic damages while in police custody (**Allegation G**).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Summary of Complaint

On April 16, 2009, the CCRB contacted § 87(2)(b) and obtained a telephone statement from her (Encl. 8A). On May 28, 2009, an official statement was obtained from § 87(2)(b) at the CCRB (Encl. 9A-F). The statements, in addition to her initial CCRB complaint made on April 2, 2009, are combined below, with inconsistencies noted.

At approximately 7:45 PM on March 25, 2009, § 87(2)(b) was taking a shower in her bathroom, inside § 87(2)(b) of § 87(2)(b) in Brooklyn. It was her birthday and, when she had entered the shower, music was playing, though not loud enough that she could hear it while in the shower. The only other people in the apartment were her son, who was sleeping in his room at the time, and a friend, § 87(2)(b). While § 87(2)(b) was inside the shower, § 87(2)(b) entered and told her “The lady upstairs says the cops are coming.” § 87(2)(b) wrapped a towel around her body and followed § 87(2)(b) who stated that the front door was open and rushed to go close it, towards the kitchen, the room closest to the front door of the apartment.

When § 87(2)(b) reached the kitchen, she saw that § 87(2)(b) was closing the front door. In her official CCRB statement, § 87(2)(b) stated that PO Fioranelli slapped § 87(2)(b)'s hand away from the door as she was closing the door and that this caused § 87(2)(b) to step away from the door, allowing PO Fioranelli and PO Harris into the apartment. § 87(2)(g)

§ 87(2)(b) In her initial complaint, § 87(2)(b) stated that the officers knocked on the door, and as § 87(2)(b) opened it, PO Fioranelli and PO Harris pushed the door open, almost knocking § 87(2)(b) to the ground. In her telephone statement, she maintained that PO Harris only slapped § 87(2)(b)'s hand, but, as in her initial complaint, stated that this occurred while § 87(2)(b) was opening the door after the officers had knocked, not while she was attempting to close it, as she maintained in her official CCRB statement.

PO Fioranelli asked, “Whose apartment is this?” Neither § 87(2)(b) nor § 87(2)(b) answered. § 87(2)(b) walked back into her bedroom and the officers followed. § 87(2)(b) was somewhat inconsistent during her CCRB statement about whether or not music was playing at the time the officers entered the apartment. During her narrative, she indicated that this is what prompted the officers to walk to her bedroom, where her speakers were. However, later, when asked to confirm this, she indicated that the music had been turned off by the time the officers had entered the apartment. She hadn’t turned it off herself and it had been playing when she went into the shower earlier but had been turned off when she exited, so she assumed § 87(2)(b) had turned it off while she was in the shower. § 87(2)(b) purse was lying on her bed inside her bedroom. PO Harris, noticing it, said, “Well, whose wallet is this, cause we’re about to find out [whose apartment it is]” and began to walk towards the bed. § 87(2)(b) rushed to the bed, picked up the wallet and handed her ID to PO Fioranelli. Ms. § 87(2)(b) account of this portion of the incident was different in her telephone statement. In her telephone statement, § 87(2)(b) stated that, as soon as the officers entered, she asked them to leave. When she did, PO Fioranelli asked to see her ID. When she asked him why he needed to see her ID, he threatened to arrest her if she didn’t provide an ID. She immediately provided her driver’s license.

PO Harris, § 87(2)(b) and § 87(2)(b) remained in the bedroom while PO Fioranelli walked back to the kitchen with § 87(2)(b) ID. After a while she heard him say either “Shit!” or “Fuck!”, though not directed at anybody. While PO Fioranelli was in the kitchen, PO Harris walked towards § 87(2)(b) son’s room. PO Harris opened the door, entered the room, and turned on the light. § 87(2)(b) who had followed her, immediately turned the light back off, telling PO Harris, “You don’t pay no bills.” PO Harris turned around and returned to § 87(2)(b) bedroom. Soon PO Fioranelli

returned to the bedroom. He told § 87(2)(b) who was still wrapped in a towel, "Go put some clothes on." § 87(2)(b) replied, "I'm not putting any clothes on, ya'll shouldn't even be here in the first place, period." PO Fioranelli then asked, "Why was your music so loud?" § 87(2)(b) told him that it was her birthday and denied that the music had been loud. The officers told her that they had received a complaint regarding the loudness of the music.

After conferring with PO Harris, PO Fioranelli told § 87(2)(b) that they would be taking her speakers, which were as set of six small surround-sound-style satellite speakers with one larger subwoofer. As PO Fioranelli was walking towards one of her speakers, which was placed on a chest in the bedroom, § 87(2)(b) rushed over to it, placed her hands on it and said, "Nah, ya'll are not." PO Harris approached § 87(2)(b) grabbed her from behind by her upper arms, pushed her against a dresser near the speakers and threatened to arrest her if she attempted to keep them from taking the speakers. § 87(2)(b) put her hands up and said, "Ok, take the speakers." PO Harris released § 87(2)(b)

PO Fioranelli proceeded to unplug the wires from two of the speakers and unplugged two of the speakers directly from the DVD player they were connected to. He also unplugged the wire from the subwoofer. While PO Fioranelli was unhooking and removing the speakers, § 87(2)(b) did not observe any damage occur to the speakers, which were brand new and had just been given to her on that day as a birthday present. The officers left, taking with them 4 of the speakers and the subwoofer.

Around 2 PM on the next day, March 26th, 2009, while § 87(2)(b) was preparing to go to work, PO Fioranelli returned to the apartment, alone and in uniform, and gave § 87(2)(b) a summons for excessive noise and a voucher for her speakers.

When, on April 1, 2009, she went to pick the speakers up from the 81st precinct, § 87(2)(b) saw that they were damaged. The side of the subwoofer, which is made of a wood, was scratched and the wood on the back was coming off. The other speakers had dents on their cases and the front-covering fabric mesh on one of the speakers had been torn.

During her CCRB statement, § 87(2)(b) drew a layout of her apartment (Encl. 9E).

Results of Investigation

Civilian Statements

§ 87(2)(b)
During her telephone statement, § 87(2)(b) provided the name and telephone number of the other victim in her complaint, § 87(2)(b). Between June 16, 2009, and July 13, 2009, the CCRB made five telephone calls to this number. On each attempt an automated response stated that the number was out of service. The CCRB left three messages and sent § 87(2)(b) an email requesting that she provide updated contact information for § 87(2)(b). § 87(2)(b) did not respond to any of these attempts. The CCRB performed an OCA database search and found an address for a § 87(2)(b). § 87(2)(b) The CCRB sent two letters to this address but received no response. A Lexis-Nexis search provided two possible addresses and one telephone number for § 87(2)(b). Letters were sent to both addresses with no response. In addition, a call was placed to the telephone number. A female respondent stated that her name was not § 87(2)(b) and she did not know anybody by that name.

§ 87(2)(b)
A SPRINT printout (Encl. 16A-B) received from MAS on June 10, 2009, indicated that a call had been made to 911 by a person named § 87(2)(b) from the telephone number "§ 87(2)(b)" from § 87(2)(b) on March 25, 2009. A Whitepages.com Reverse Lookup revealed that the number belonged to a

§ 87(2)(b) who resided § 87(2)(b) in Brooklyn. On June 12, 2009, a letter was sent to § 87(2)(b). On June 23, 2009, § 87(2)(b) called the CCRB in response to the letter and provided a telephone statement, which is summarized below.

On the evening of March 25, 2009, sometime after 7 PM, when § 87(2)(b) who lives on the § 87(2)(b) floor of § 87(2)(b) in Brooklyn, got home from work, she heard very loud music coming from the § 87(2)(b) floor. She went to the § 87(2)(b) floor and knocked on the door. A female, who wasn't § 87(2)(b) the woman who § 87(2)(b) knew to be the resident on the § 87(2)(b) floor, answered the door. § 87(2)(b) asked the woman if she could please turn down the music. The female refused. When § 87(2)(b) asked her where § 87(2)(b) was, the female said that she wasn't home. The female returned into the apartment and the volume of the music became even louder. § 87(2)(b) went back up to the § 87(2)(b) floor and called 911.

When the officers arrived, they pressed the bell downstairs and § 87(2)(b) went down to open the front door for them. The music was still playing very loudly. The officers confirmed her name and that she was the one who had placed the call. She recounted her complaint to them and they told her to return to her floor. She did so.

From the § 87(2)(b) floor, § 87(2)(b) could hear the officers knocking on the door of the § 87(2)(b) floor. The music was still playing. From what she heard, they initially knocked with their hand with no answer. She then heard them knock on the door with what sounded like a baton. She then heard the volume of the music go down and the door on the § 87(2)(b) floor open.

§ 87(2)(b) could hear the officers and § 87(2)(b) talking but could not make out what was being said, except for one moment when she heard the voice of § 87(2)(b) shout, "Are you kidding me, officer? Are you stupid or what?"

Officer Statements

Identification of Officers Interviewed

During the incident, § 87(2)(b) took note of and remembered PO Harris' name on her badge because they shared the same last name. She provided PO Harris' name and a description to the CCRB during her initial complaint. PO Emily Harris was identified in the CTS database as the only female officer with the last name "Harris" in the 81st precinct. At her CCRB interview, § 87(2)(b) provided a copy of the summons she was given during this incident, which was identified to have been written by PO Philip Fioranelli.

Summons # § 87(2)(b)

The Summons issued to § 87(2)(b) by PO Fioranelli on March 25, 2009, (Encl. 11A-B) was issued for § 87(2)(b) at § 87(2)(b) at 7:45 PM. § 87(2)(b) signed and dated the summons on March 25, 2009, acknowledging receipt of the summons on that date. PO Fioranelli signed the section indicating that he "personally observed the commission of the offense charged above." The summons also contains § 87(2)(b) name, address, and license number.

PO Philip Fioranelli's Memo Book

PO Fioranelli's memo book (Encl. 12A-E) contains several entries regarding this incident. The first entry is noted at 1955 (7:55 PM) on March 25th, 2009: "52 @ § 87(2)(b)", indicating a report of a "dispute" at § 87(2)(b) building. The next entry is made at 1956: "90x", indicating an "unfounded" complaint. The next entry was made at 2006 (8:06 PM): "96", indicating that a summons was served. The next entry is at 2009 (8:09): "62 @ 81PCT", indicating that he was "out of service" at the precinct. Underneath this entry is "(4) speakers (1) woofer box removed." The first line of the next entry, made at 2015

(8:15 PM), is unreadable, but the second line reads: "Vouchers § 87(2)(b)." The next related entry is made at 1605 (4:05 PM) on March 26, 2009: "61 to § 87(2)(b) indicating that PO Fioranelli was on a "precinct assignment" to § 87(2)(b). The last entry, made at 1614 (4:14 PM), states: "91 voucher copies delivered", indicating a "non-crime corrected."

PO Philip Fioranelli's CCRB Statement

On July 20, 2009, Police Officer Philip Fioranelli was interviewed at the CCRB (Encl. 13A-C). PO Fioranelli is a § 87(2)(b)-old 5'8" 222lb White male with brown hair and brown eyes.

At approximately 7:35 PM on March 25, 2009, PO Fioranelli and his partner, PO Emily Harris, received a radio run that a "52 dispute between neighbors" had occurred at § 87(2)(b) where the complainant lived on the § 87(2)(b) floor. PO Fioranelli and PO Harris responded to the call. When they arrived at § 87(2)(b) there was loud music coming from the § 87(2)(b) floor. The music was so loud that, even when a train passed by on the elevated tracks next to the house on Atlantic Avenue, he could still hear the music. He knocked on the door to the main entrance or rang a bell (He couldn't remember which it was). No one answered the door. He called central dispatch and asked them to contact the complainant and have her come open the main door.

Soon § 87(2)(b) came down the stairs and opened the front door. The music was still playing very loudly. PO Fioranelli asked her about her complaint. She explained that her children were trying to sleep but that the loud music from the § 87(2)(b) floor was disturbing them. She said that she had attempted to speak with her neighbor on the § 87(2)(b) floor about lowering the music, but that the neighbor had refused and instead raised the volume of the music. She said that the same thing had been happening for the past few days. PO Fioranelli told § 87(2)(b) to return to the § 87(2)(b) floor in order to avoid a confrontation between her and her neighbor.

PO Fioranelli and PO Harris went up to the § 87(2)(b) and knocked on the steel door. No one answered. PO Fioranelli began pounding on the door with his fist. He also kicked the door a few times. After a minute or two, § 87(2)(b) who stated that she was not the resident of the apartment but a friend of the resident, opened the door. She opened the door about a foot or two and stood in the doorway to speak with the officers. PO Fioranelli asked her if they could enter the apartment speak with her and the resident. She refused, saying, "No, my girlfriend is getting dressed." After some time, § 87(2)(b) opened the door fully and walked back into the apartment and the officers followed. PO Fioranelli denied ever hitting or pushing § 87(2)(b)'s hand from the door or forcing the door open.

When the officers entered the apartment, they saw § 87(2)(b) in the bedroom wearing only lingerie, in the process of getting dressed. They were in a small dark room that separated the front door from the bedroom. PO Fioranelli and PO Harris followed § 87(2)(b) into the bedroom. PO Fioranelli told § 87(2)(b) "Put some clothes on." He then told them to turn the music down. The music was coming from a set of surround sound speakers and a subwoofer grouped together on the side of the bedroom. They initially refused but eventually either § 87(2)(b) or § 87(2)(b) (he didn't remember which one of them) turned it down. After the music was lowered, PO Fioranelli asked § 87(2)(b) "What's going on? Why's the music so loud?" She explained that it was her birthday and she and her friend were celebrating. She also said that the music as loud as it was because § 87(2)(b)'s children had been jumping up and down and disturbing her. PO Fioranelli explained to § 87(2)(b) that § 87(2)(b)'s children were attempting to sleep and that she couldn't play her music as loud as she had been playing it in a multiple apartment dwelling. § 87(2)(b) began arguing and shouting at PO Fioranelli and PO Harris loudly, saying, "I don't give a shit about her or her kids." PO Fioranelli told § 87(2)(b) that he was considering giving her a summons.

PO Fioranelli told § 87(2)(b) that if she turned the music back on, he would have to arrest her. § 87(2)(b) continued to yell at the officers and stated that she would still play her music after they left. In lieu of arresting her, PO Fioranelli asked § 87(2)(b) for her ID and told her that he would be issuing her a summons for the loud music. She gave him the ID and he proceeded to run a warrant check on it. PO Fioranelli then told her that he would be taking the speakers. PO Fioranelli began disconnecting the wires to the speakers. As PO Harris was doing the same to one of the other speakers, § 87(2)(b) said, "You're not taking my property," and grabbed one of PO Harris' arms. PO Harris flailed her arm to push back § 87(2)(b). § 87(2)(b) released PO Harris' arm. PO Fioranelli stated that he could have arrested § 87(2)(b) for OGA (Obstructing Governmental Administration) for trying to prevent PO Harris from taking the speakers but chose not to. The officers gathered up the speakers, four satellites and a subwoofer, and left the apartment. PO Fioranelli stated that it was his decision to seize the speakers.

PO Fioranelli insisted that at no point did he or did he see PO Harris go into any room beyond the bedroom. He also insisted that, as far as he was aware, § 87(2)(b) and § 87(2)(b) were the only people in the apartment at the time of the incident.

Back at the 81st Precinct Stationhouse, PO Fioranelli vouchered the speakers and placed them in the property room. He did not have any further contact with the speakers after this. The next day, on March 26, 2009, he returned to § 87(2)(b) apartment and gave her the vouchers for the speakers.

PO Emily Harris' Memo Book

PO Harris' memo book (Encl. 14A-B) contains no entries related to this incident.

PO Emily Harris' CCRB Statement

On July 30, 2009, PO Emily Harris was interviewed at the CCRB (Encl. 15A-C). PO Harris is an approximately 5'6", 145 pound Black female with brown eyes and black hair.

On the evening of March 25, 2009, at some time before 7:45 PM, PO Harris and PO Fioranelli were patrolling sectors I and J when they received a radio-run for a noise complaint at § 87(2)(b). The officers drove to the location. From the moment she stepped out of the patrol car, PO Harris could hear very loud music coming from the building. The officers approached the house and rang the bell. After a short wait, § 87(2)(b) came to the door and explained to them that she was the one who had made the call to 911 and stated that her neighbor living on the floor below her had been playing loud music all day.

The officers told § 87(2)(b) to go back up to her apartment and proceeded to go up to the apartment where the music was coming from. They knocked on the door and immediately a female opened the door. PO Harris could not recall whether the person who opened the door was § 87(2)(b) or § 87(2)(b). They asked to be allowed into the apartment and the woman allowed them into the apartment. Once inside, PO Harris saw that there was another female in the apartment. The second female was wearing only lingerie and PO Harris told her to put some clothes on. PO Harris asked § 87(2)(b) and § 87(2)(b) to turn down the music. PO Harris, during her narrative, stated that they refused to lower the music. However, later, when questioned further, she stated that either § 87(2)(b) or § 87(2)(b) did in fact initially lower the music when they asked her to but refused to turn it off when they told her to do so later in the incident. § 87(2)(b) stated that she was having a dispute with her neighbor upstairs and was playing her music loudly to upset her.

PO Fioranelli asked § 87(2)(b) for her ID and issued her a summons for "unreasonable noise from a stereo." PO Harris stated that the ticket was issued because the music was disturbing § 87(2)(b) and because, in their judgment, the music was unreasonably loud, especially considering that they could hear it from the street when they initially arrived at the location. PO Harris then told § 87(2)(b) that she would have to turn off the music before they could leave. § 87(2)(b) replied, "I don't have to do *that*."

PO Harris explained to § 87(2)(b) that as officers, they could not leave her apartment if the dispute over the music between her and her neighbor was likely to continue and lead to a further altercation after they left and that they would have to seize her speakers if she refused to turn off the music. In order to ensure that the dispute would not continue after they left, the officers decided to take § 87(2)(b) speakers, which were on the wall of her apartment, attached to a DVD player. PO Harris and PO Fioranelli began taking the speakers down from the wall. As PO Harris was picking up a speaker, § 87(2)(b) lunged at her. PO Harris pushed § 87(2)(b) back and told her that if she attempted to stop them from taking the speakers, they would have to arrest her.

PO Harris and PO Fioranelli took the speakers to the 81st precinct stationhouse, where PO Fioranelli vouchered the speakers. PO Harris did not have any further contact with the speakers after that point.

PO Harris described the apartment as a studio apartment with a small partition for the kitchen. She did not recall there being any doors in the room that might have led to other rooms and she denied ever going into any other room or opening any doors inside the apartment. She also stated that she knew of the presence of only two people in the room, § 87(2)(b) and § 87(2)(b). Other than pushing § 87(2)(b) away when she attempted to stop her from taking the speakers, PO Harris denied that either she or her partner had any other physical contact with either § 87(2)(b) or § 87(2)(b).

Police Documents

SPRINT Printouts

SPRINT #§ 87(2)(b) (Encl. 16A) indicates that, at 1933 (7:33 PM) on March 25, 2009, a female caller by the name of § 87(2)(b) called 911 from “§ 87(2)(b)” and stated that an argument had occurred at § 87(2)(b) in Brooklyn. She stated that she would meet with officers at the location. At 2005 (8:05 PM), officers from the sector “81I” reported back to the precinct stationhouse regarding this complaint (10-83). At 21:33 (9:33 PM) a summons was served (10-96).

SPRINT #§ 87(2)(b) (Encl. 16B) indicates that at 1949 (7:49 PM) on March 25, 2009, sector “81I” arrived at § 87(2)(b). At 1950 (7:50 PM), a negative warrant check was run at the location (10-19). At 2004 (8:04 PM) a warrant was served by sector “81I” (10-96).

Roll Call

The 81st Precinct Tour 3 Roll Call (Encl. 17A) indicates that PO Fioranelli and PO Harris were partners on March 25, 2009, and were assigned to sector “IJ”.

MISD Warrant Check

An MISD printout of warrant checks for § 87(2)(b) (Encl. 18A-B) indicates that a warrant check was run on the name § 87(2)(b) at 19:50 (7:50 PM) on March 25, 2009. It doesn’t list a tax ID for the officer who ran the check, rather, it lists it as a “local warrant check” (MISPRDA).

Property Clerk’s Invoice

Voucher #§ 87(2)(b) (Encl. 19A), prepared on March 25, 2009, by PO Fioranelli for § 87(2)(b) lists 4 ‘Samsung speaker model PS-RZ410.’ It is listed as Arrest evidence with the charge of “§ 87(2)(b)” In the remarks section, it states, “Items recovered from defendant’s bedroom. Vouchered for arrest evidence and sealed in security envelope # § 87(2)(b). It was signed and verified by a Desk Sergeant with tax # 897117. The CTS Database linked this tax ID to Sgt. Anthony Caggiano of the 81st precinct.

Voucher #§ 87(2)(b) (Encl. 19B), prepared on March 25, 2009, by PO Fioranelli for § 87(2)(b) lists 1 ‘Samsung Subwoofer model PS-WZ410.’ It is listed as Arrest evidence with the charge of “§ 87(2)(b)” In the remarks section, it states, “Items recovered from defendant’s

bedroom. Vouchered for arrest evidence. Placed in clear plastic bag sealed with pedlar seal # § 87(2)(b) It was signed and verified by Sgt. Anthony Caggiano

CCRB History of Officer

PO Philip Fioranelli (Encl. 3A)

The board has not substantiated any previous CCRB allegations against PO Fioranelli in a 5-year tenure with the NYPD.

PO Emily Harris (Encl. 4A)

The board has not substantiated any previous CCRB allegations against PO Harris in a 3-year tenure with the NYPD.

Conclusions and Recommendations

Officer Identification

Throughout her various statements, § 87(2)(b) was consistent as to which officer took what action. In addition, the SPRINT printouts (Encl. 16A-B) indicate that sector “81P” responded to § 87(2)(b) § 87(2)(b). The 81st Precinct Tour 3 Roll Call (Encl. 17A) indicated that PO Harris and PO Fioranelli were assigned to sectors I and J. This was confirmed by the statements of both officers and of the civilians interviewed. Since both officers admit to having entered § 87(2)(b) apartment, the allegation of entry is pleaded against both PO Fioranelli and PO Harris.

§ 87(2)(b) in her statements, clearly and consistently stated that PO Harris was the officer who entered and looked into her son’s room. Further, in her official CCRB statement, she stated that PO Fioranelli was not in the bedroom at the time this aspect of the incident occurred and did not witness it. Therefore the allegation of search is pleaded against PO Harris.

§ 87(2)(b) in her statements, clearly and consistently stated that PO Harris was the officer who pushed her when she attempted to prevent the officers from taking her speakers. The statements of both PO Harris and PO Fioranelli were consistent with this. Therefore the allegation of force is pleaded against PO Harris.

Even though PO Fioranelli stated that it was his decision to seize § 87(2)(b) speakers, because they were both involved in the seizing of the speakers, the allegation of seizing § 87(2)(b) property is pleaded against both PO Fioranelli and PO Harris.

§ 87(4-b) § 87(2)(g) § 87(2)(b)

The investigation was unable to establish the extent and chronology of the damage allegedly done to § 87(2)(b) § 87(2)(b) speakers while in police custody, the allegation of damage to § 87(2)(b) property is pleaded against “Officers.”

Undisputed Facts

It is undisputed that § 87(2)(b) made a 911 call on the evening of March 25, 2009, and that PO Fioranelli and PO Harris responded to this call at § 87(2)(b). It is undisputed that music was being played in § 87(2)(b) apartment or had been played, at least until shortly before the officers arrived at the location. It is undisputed that the two officers entered the § 87(2)(b) floor apartment of § 87(2)(b). It is undisputed that when the officers entered, § 87(2)(b) was in her apartment with a friend of hers, who she identified as § 87(2)(b). It is undisputed that PO Fioranelli issued § 87(2)(b) a summons for making excessive noise. It is undisputed that PO Fioranelli and PO Harris seized § 87(2)(b) speakers and took them back to the precinct. It is undisputed that § 87(2)(b) attempted to prevent the officers from taking her speakers, though the manner in which she attempted to do this is disputed, and that PO Harris used force to prevent her from doing and threatened to arrest her if she attempted to do so again. It is undisputed that no immediate damage occurred to the speakers while they were being taken by the officers. It is undisputed that on March 26, 2009, PO Fioranelli returned to § 87(2)(b) apartment and gave her a pair of vouchers for her speakers.

Disputed Facts

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) stated that when she went into the shower, music was playing in her apartment, though not very loudly, and that, when she exited the shower, the music was off. § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) PO Harris, and PO Fioranelli all assert that the music coming from § 87(2)(b) apartment was very loud and was still on when the officers arrived at the building. Both PO Harris and PO Fioranelli stated that they could hear the music clearly from the street when they exited their patrol car. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

§ 87(2)(g) In her initial complaint, she stated that the officers knocked on the door and as § 87(2)(b) was opening it, PO Fioranelli pushed the door in, almost knocking § 87(2)(b) to the ground. In her telephone statement, she stated that the officers knocked on the door and, as § 87(2)(b) was opening it, PO Fioranelli knocked her hand out of the way and entered the apartment. In her official CCRB statement, § 87(2)(b) stated that the door was already open when the officers arrived and that, as § 87(2)(b) attempted to close it, PO Fioranelli slapped her off the door. § 87(2)(b) then stepped out of the way and the officers walked in. § 87(2)(b) and PO Fioranelli assert that the officers knocked on the door of § 87(2)(b) for a prolonged period of time before the door was opened. PO Harris asserts that though they knocked on the door, it was answered in a short amount of time. PO Harris and PO Fioranelli both assert that they in no way forced their way into the apartment and that they were allowed into the apartment by § 87(2)(b). Furthermore, in her telephone statement, § 87(2)(b) asserted that she asked the

officers to leave immediately after they entered the apartment but made no such assertion in her official CCRB statement. [REDACTED] § 87(2)(g) [REDACTED]

[REDACTED]

In her initial complaint and official CCRB statement, [REDACTED] § 87(2)(b) alleged that PO Harris opened the door to her son's bedroom, where he was sleeping, turned on the light inside, and looked into the room. In her initial statement, she said that this occurred while PO Fioranelli was unplugging her speakers. In her CCRB statement, she said that this occurred when PO Fioranelli was out of the room running a warrant check on her driver's license. During her CCRB statement, [REDACTED] § 87(2)(b) drew a diagram of her apartment (Encl. 9E), showing that her son's bedroom was the room immediately after hers and that the door to his room was in her bedroom. Both officers denied that PO Harris ventured into any rooms beyond [REDACTED] § 87(2)(b) bedroom and could not recall any doors leading from the bedroom deeper into the apartment. PO Harris described the apartment as a studio apartment and PO Fioranelli described it as a one-bedroom with a small living-room-kitchen combo separating the front door from the bedroom. They both also denied being aware of the presence of [REDACTED] § 87(2)(b) son inside the apartment. [REDACTED] § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] § 87(2)(b) stated that, after PO Fioranelli told her that they would be seizing her speakers, she stated that she would not allow them to take it and then placed her hands on one of the speakers. She alleged that, while she was holding the speaker, PO Harris approach her and pushed her against a nearby dresser. She reported no injuries as a result of this use of force. Both PO Fioranelli and PO Harris affirmed that this, more or less, occurred. PO Fioranelli stated that, while PO Harris was taking one of [REDACTED] § 87(2)(b) speakers, [REDACTED] § 87(2)(b) grabbed a hold of PO Harris and PO Harris reacted by pushing [REDACTED] § 87(2)(b) away. PO Harris stated that, while she was taking one of [REDACTED] § 87(2)(b) speakers, [REDACTED] § 87(2)(b) lunged at her and she pushed [REDACTED] § 87(2)(b) away. While the three accounts are different in certain respects, they are all consistent in that [REDACTED] § 87(2)(b) told the officers she would not allow them to take her speakers and then attempted to physically prevent the officers from taking them. [REDACTED] § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

The NYPD Patrol Guide gives guidelines on how members of the NYPD are to handle a noise disturbance involving a "sound reproduction device" (Encl. 1D-F). One of the steps that the Patrol Guide prescribes, after issuing a summons for the violation, is for the officer involved to seize the device [REDACTED] § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED] § 87(2)(b) in her official CCRB Statement stated that PO Fioranelli returned on March 26, 2009, and handed her both the vouchers for her speakers and the summons for excessive noise. In her initial complaint and telephone statement, [REDACTED] § 87(2)(b) did not specify when she received the summons. Both officers stated that the summons was given to [REDACTED] § 87(2)(b) on March 25, 2009, during the initial incident. [REDACTED] § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b) alleged that, when she retrieved her speakers from the 81st precinct, they had suffered cosmetic damages. On June 2, 2009, § 87(2)(b) in a conversation with the CCRB, promised to provide photos of the damage suffered by her speakers while in police custody. She failed to provide these photos and failed to respond to four subsequent attempts made between June 16, 2009, and July 2, 2009, to contact her. She, along with both officers, asserted that no damage occurred to the speakers while they were being unplugged and carried away by PO Harris and PO Fioranelli. § 87(2)(g)

Allegations

Allegations Not Pleaded

§ 87(2)(b) made two allegations, one against each officer, of threats of arrest. She alleged that PO Fioranelli threatened to arrest her if she did not provide an ID when he asked her for one before issuing her the summons. She also alleged that PO Harris threatened to arrest her if she attempted to prevent them from taking her speakers.

Regarding the first allegation, section 209-09 of the NYPD Patrol guide (Encl. 1C) states that, in the process of issuing a summons, an officer may “Remove violator to command for investigation if doubt concerning identity exists.” § 87(2)(g)

Regarding the second allegation of threat of arrest, which PO Harris admitted to having made, § 87(2)(b) had committed an arrestable offence. New York State Penal Law section 195.05 (Encl. 2A) states that, “A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference.” § 87(2)(g)

§ 87(2)(b) alleged in her CCRB statement that, while PO Fioranelli was in the kitchen running the warrant check on her driver’s license, she heard him say either “Shit” or “Fuck.” Because she affirmed that PO Fioranelli was in the kitchen alone § 87(2)(g)

(A) Force: PO Philip Fioranelli used physical force against § 87(2)(b)

§ 87(2)(g)

(B) Abuse of Authority: PO Philip Fioranelli entered § 87(2)(b)

(C) Abuse of Authority: PO Emily Harris entered and searched § 87(2)(b)

§ 87(2)(g)

While Section 214-23 of the NYPD Patrol guide (Encl. 1D-F) provides

officers the latitude “to forcibly enter a private or semi-private premises to correct noise complaints”, it also places many restraints on the utilization of this latitude. It requires that the decision be made by precinct commander/patrol captain and to be used only as last resort after prior requests to stop the noise have been ignored. § 87(2)(g)

(D) Force: PO Emily Harris used physical force against § 87(2)(b)

Section 203-11 of the NYPD Patrol Guide (Encl. 1A-B) allows for officers the use force, insofar as they use “Only that amount of force necessary to overcome resistance.” § 87(2)(g)

(E) Abuse of Authority: PO Philip Fioranelli seized § 87(2)(b) s property.

(F) Abuse of Authority: PO Emily Harris seized § 87(2)(b) s property.

Section 214-23 of the NYPD Patrol Guide (Encl. 1D-F) deals with how officers are to handle Unnecessary Noise Violations. In situations where these violations involve “sound reproduction devices” such as stereos and speakers, it indicates that “A uniformed member of service may legally seize a sound reproduction device...a private home, if the uniformed member is invited inside and sees the devices responsible for the noise, after issuing a summons to the operator/owner of the device.” It allows for this seizure both as evidence, and as a means to “abate a nuisance.” § 87(2)(g)

(G) Abuse of Authority: Officers damaged § 87(2)(b) s property.

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Investigator: Alexander Opoku-Agyemang

Date: November 19, 2009

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: